



Biden administration corners itself on border policy

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The [Biden](#) administration has painted itself into a corner on border policy, whittling its options down to either re-implementing Trump-era asylum restrictions unpopular with immigrant advocates, or moving forward with a plan to lift those restrictions against the wishes of its most vulnerable Senate allies.

Many vulnerable Senate Democrats are openly criticizing the administration for ending Title 42, a Trump-era border management policy that stripped migrants of their right to claim asylum under the guise of pandemic public health protections.

The policy is due to end May 23, and while the [Biden](#) administration says it is logistically preparing for a surge in migration, the absence of clear White House messaging has Democrats going rogue ahead of the November midterms.

Some Senate Democrats, led by Sen. Kyrsten Sinema (Ariz.), earlier this month joined forces with a Republican group led by Sen. [James Lankford](#) (R-Okla.) that would codify the Title 42 policy, tying its continued implementation to other nationwide COVID-19 prevention measures.

Others, including Title 42 critics like Sens. [Catherine Cortez Masto](#) (D-Nev.) and Raphael Warnock (D-Ga.), criticized the lack of a clear mandate on the border and warned lifting Title 42 could send the wrong message to immigrant smugglers.

Sen. [Gary Peters](#) (D-Mich.), who leads both the Senate Homeland Security and Governmental Affairs Committee and the Senate Democrats’ campaign arm, said he’s been in constant communication with the administration about its post-Title 42 plans, adding he “still want[s] to hear more.”

“Unless we have a well thought out plan, I think it is something that should be revisited and perhaps delayed. I’m going to defer judgment on that until I give the administration the opportunity to fully articulate what that plan is. But I share the concerns of some of my colleagues,” said Peters.

Still, administration officials are quick to point out that Title 42 is not technically an immigration authority, rather a public health authority, and its removal does not mean it will be easier to cross the border illegally.

“Let me reiterate again – Title 42 is not an immigration authority. It was a public health directive determined by the CDC. With Title 42 in place, a significant percentage of migrants have re-attempted to enter the United States illegally following their rapid expulsions because they were not placed in immigration proceedings, not processed through our system, and ultimately faced no consequences for attempting to re-enter the country illegally,” a White House spokesperson told The Hill.

Lifting Title 42, added the spokesperson, is a return to the standard “in which people will be processed and placed in proceedings, and those not seeking protection or who don’t qualify will be promptly removed to their countries of origin, as well as potentially face other long-term immigration consequences.”

According to many immigration advocates, the broken communication between Senate Democrats and the White House rests plainly on the administration’s shoulders.

“It’s been so frustrating from a communications point of view to see how the missed opportunities by this White House in the last year has led to this moment where we are,” said Frank Sharry, head of America’s Voice, a progressive immigration advocacy group.

Sharry added that Democratic challengers for Senate seats in states like Pennsylvania and Wisconsin are following Peters’ lead, taking a wait-and-see approach on the administration’s messaging while developing their own.

“All of a sudden, all these candidates are saying the same thing [Peters] is saying, so clearly it’s coordinated. And they’re basically saying, ‘we can’t trust this administration to defend its plan or to implement it competently. And so we’re gonna need to distance ourselves from the administration on this, because we can’t count on them,’” said Sharry.

“That is a real indictment of a failed political strategy, as well as a lack of confidence in their ability to operationalize policy.”

Even as the [Biden](#) administration in its first week in office sought to roll back a host of Trump-era immigration orders – Remain in Mexico, the Muslim ban, and seeking to reunite parents and children separated under Trump – it never did so for Title 42.

That decision flew in the face of administration messaging that they would create a safe, orderly and humane immigration system.

“By delaying it to this point, they’ve done themselves a major political disservice,” said David Bier, associate director of immigration studies at the Cato Institute, a libertarian think tank.

“Because now they really showed their hand. They gave permission to people within their own party to oppose getting rid of Title 42. By showing that they were not committed to what they said they were going to be committed to, it really sent the signal out to everyone within the party

that they see it as a political liability to get rid of Title 42. And once that message goes out, you can't just pull it back overnight.”

The resistance from moderate and vulnerable Democrats follows months of disappointment and frustration from others in the party over [Biden](#) holding on to a Trump policy that they say illegally blocks access to the asylum system.

Administration officials are touting the return of regular asylum processing, warning that regardless of expanded asylum infrastructure, that could mean more deportations, not fewer.

“Our view point is that asylum and other legal migration pathways should remain available to those seeking protection, and we are working to expand legal pathways in the region so that people don't make the treacherous journey,” said the White House spokesperson.

“But those not seeking protection or who don't qualify will be promptly removed to their countries of origin. The eventual lifting of Title 42 – is a return to this standard – in which people will be processed and placed in proceedings, and those not seeking protection or who don't qualify will be promptly removed to their countries of origin, as well as potentially face other long-term immigration consequences.”

Still, the push from both sides has cast Title 42 as a binary choice, and some are frustrated the administration has failed to forcefully make its case.

“What Trump and Stephen Miller wanted is a binary debate between ‘let them all in’ and ‘keep them all out.’ That's the debate they wanted, and because this White House has decided not to engage the argument, the vacuum has been filled by a right-wing narrative that the border is out of control,” said Sharry.

Even before Title 42 was lifted, DHS outlined a plan to confront an expected uptick in migration, something that could result from typical spring patterns or the lifting of the order.

The plan was largely logistical, looking at how to surge resources to the border – housing, medical care, transportation, and processing capacity.

“It reads like a logistical document. ... It's not a policy document,” said Bier.

Immigration advocates across the political spectrum say the administration's messaging failure has been compounded by unimaginative policy solutions that don't translate into policies they can sell to the electorate.

A Gallup poll conducted in March shows 41 percent of Americans worry “a great deal” about illegal immigration, although only 18 percent of Democrats feel the same way.

And while Title 42 has become a top issue, its inner workings are regularly misrepresented both in the press and by commentators.

Immigration advocates like Bier and Sharry – a libertarian and a progressive – both agree that a policy of humane asylum processing and strict border enforcement would not only be easier to implement, but politically beneficial for the administration.

For Bier, that means trying to stem illegal border crossing by processing asylum seekers at ports of entry.

“That’s the way out. That’s the path that pleases the middle is, we’re going to end this illegal part of where people are crossing chaotically and through a river and we’re going to have these overcrowded detention facilities,” said Bier.

“The only way you please the middle of the country, and the moderates, and actually get out from under this political liability is if you’re projecting a message of, ‘Hey, the number of people crossing illegally is going down,’” Bier added.

“Yes, more people are crossing and claiming asylum, but they’re coming in legally. They’re getting in line. We’re processing like we processed people at Ellis Island.”